

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICK ROCK,	:	No. 17 Civ. 2618 (ALC)
	:	
Plaintiff,	:	
	:	
-against-	:	
	:	
ENFANTS RICHES DEPRIMES, LLC,	:	
BARNEYS NEW YORK, INC. and THE	:	
REALREAL, INC.,	:	
	:	
Defendants.	:	
-----X	:	

**DECLARATION OF BARRY I. SLOTNICK IN SUPPORT OF
ENFANTS RICHES DEPRIMES, LLC’S AND BARNEYS NEW YORK, INC.’S
MOTION FOR ATTORNEYS’ FEES, COSTS, AND SANCTIONS**

BARRY I. SLOTNICK declares under penalties of perjury, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner and chair of the Intellectual Property and Entertainment Litigation Practice Group at Loeb & Loeb LLP (“Loeb”), attorneys for Defendants Enfants Riches Deprimes, LLC and Barneys New York, Inc. (together, “Defendants”) in this action. I am fully familiar with the matters asserted herein and respectfully submit this declaration in support of Defendants’ motion for attorneys’ fees and costs pursuant to section 505 of the Copyright Act (17 U.S.C. § 505) and for sanctions pursuant to 28 U.S.C. § 1927 and the Court’s inherent powers.

2. I submit this declaration in support of Defendants’ Motion for Attorneys’ Fees, Costs, and Sanctions (the “Fee Application”), in order to support the reasonableness of the attorneys’ fees and non-taxable costs incurred by Defendants in this action from April 13, 2017

to March 26, 2019, and to provide the Court with documentation for those attorneys' fees and costs.

3. Defendants seek \$160,038.50 in attorneys' fees and \$4,181.82 in non-taxable costs, incurred in connection with work performed by Loeb from April 13, 2017 to March 26, 2019. As discussed below, these fees and costs were reasonably and necessarily incurred in defending this copyright action, especially given the subject matter of the action, and the fact that Plaintiff had no basis to pursue his claims.

4. Defendants reserve the right to seek recovery of additional fees and costs incurred in completing the instant motion and any reply, which additional fees and costs cannot be computed at this time. Defendants estimate that such additional fees and costs will be between \$20,000 and \$30,000, depending on the length and complexity of Plaintiff's opposition.

I. The Hourly Rates of Loeb Attorneys Are Commensurate With Experienced Intellectual Property and Bankruptcy Attorneys In The Relevant Jurisdiction

5. Loeb is a full-service law firm with domestic offices in Los Angeles, New York, Chicago, San Francisco, Nashville, and Washington, D.C. Loeb is widely known for its intellectual property litigation practice.

6. Loeb employs approximately 350 attorneys, 63 of whom specialize in Intellectual Property and related industries. In 2018, The Legal 500 ranked Loeb among the top law firms in Intellectual Property – Copyright (Ex. 1), and noted that Loeb is “recommended for copyright advisory work in the music, motion picture and television industries, and also frequently handles prominent contentious matters.” (Ex. 4) In 2018, Chambers U.S.A. ranked Loeb among the top Media and Entertainment law firms, and recognized Loeb as a “[h]ighly respected entertainment law firm, fielding a deep bench of specialist attorneys and offering considerable nationwide capabilities” and highlighted Loeb's New York City office as “[p]articularly strong in

intellectual property and contractual disputes about the ownership and exploitation of music, film and television content.” (Ex. 2) Loeb was also named to *The National Law Journal’s* inaugural “Intellectual Property Hot List”, which recognized firms that excel in providing patent, copyright and trademark legal services. (Ex. 3)

7. In addition to me, the litigation attorneys assigned to work on this case included senior associate C. Linna Chen and associate Sarah Levitan Perry, and entertainment partner Debbie White also worked on this case.

8. The other Loeb professionals who assisted with this matter include paralegals Antoinette Pepper, Geri Papa, Timothy Cummins, and Lawrence Mehringer.

9. Based on my experience and personal knowledge, the hourly rates charged by Loeb partners, associates, and paralegals in this case, which are set forth below, are less than those charged by other New York City law firms of comparable size, reputation, and expertise to defend similar cases.

10. The defense of this copyright litigation required expertise in copyright law. I therefore respectfully submit that Loeb’s hourly rates are reasonable given Loeb’s expertise in copyright law.

A. Barry I. Slotnick

11. I am a partner and chair of the Intellectual Property and Entertainment Litigation Practice Group in Loeb’s New York City office. I am a graduate of the Syracuse University College of Law, where I graduated with Honors, and have been licensed to practice law in the State of New York since 1972. I have been nationally recognized as a copyright and trademark litigator who has represented clients in the music and entertainment industries in courts throughout the United States. I frequently lecture on the topics of entertainment and copyright law. From 2004 to 2006, I served as President of the Copyright Society of the U.S.A. In 2018,

Chambers U.S.A. recognized me as a Notable Practitioner in the practice of Media & Entertainment: Litigation. (Ex. 2) In 2015, *The Legal 500* recognized me as a Leading Lawyer in the practice of Intellectual Property law and I was also selected for inclusion in the inaugural Legal 500 Hall of Fame list that highlights partners that have been recommended as a ‘leading lawyer’ for the last 6 years consecutively. (Ex. 4) I have also been recognized in *Super Lawyers* for my work in Intellectual Property litigation and entertainment law. A copy of my bio is attached as Exhibit 5.

12. I served as lead counsel in this action. My time on this matter was primarily spent formulating case strategy, reviewing briefs and other written court submissions drafted by Loeb associates, and generally overseeing the progress of the case.

13. From April 13, 2017, to March 26, 2019, I billed 51.3 hours on this matter, for total fees of \$46,837.61. My average effective hourly rate during the relevant period was \$913.01.¹

14. Attached hereto as Exhibit 6 is a 2014 Billing Survey published by The National Law Journal (“NLJ Survey”) with relevant portions highlighted. The NLJ Survey indicates that the hourly rates for highly experienced partners at law firms of comparable size in New York City range from \$860.00 to \$1,250.00, of which the average hourly rate of \$913.01 is on the low end, and also does not account for rate increases that have occurred since 2014. (Ex. 6)

B. Debbie White

15. Ms. White is a partner and deputy chair of the Music Industry practice in Loeb’s New York City Office. She is a 1996 graduate of New York University School of Law, where

¹ Average effective hourly rates for each professional were calculated by dividing the amount billed by that professional, subtracting from that amount any discounts extended to Defendants, and dividing the result by the total hours worked.

she graduated *magna cum laude* and Order of the Coif. She has been licensed to practice law in the state of New York since 1998. She is a nationally recognized entertainment lawyer, known for her work negotiating multimillion-dollar recording contracts, as well as agreements related to publishing, worldwide touring, film soundtrack and Broadway cast albums, merchandising and sponsorships. A significant portion of her music practice centers on the development of copyright strategies and implementation of licensing efforts for digital companies, major advertisers and advertising agencies, sports and television networks, and entertainment companies. In 2018, the *Hollywood Reporter* recognized Ms. White as a Power Lawyer, and in 2019, named Ms. White a Top 10 Music Attorney. (Ex. 7) In 2019, *Crain's* recognized Ms. White among the Notable Women in Law. (Ex. 8) In 2018, *Billboard* recognized Ms. White as one of the top music lawyers in the country, (Ex. 9) and from 2016-2018, *Billboard* recognized Ms. White as one of the most influential lawyers and industry leaders in its Women in Music feature. (Ex. 12) *Variety* has also recognized Ms. White's work – among other accolades, in 2018, she was named among the top women entertainment leaders, and among the top entertainment attorneys. (Ex. 10) In 2018, *The Legal 500* recognized Ms. White as a Leading Lawyer in the practice of Media & Entertainment law. (Ex. 11). And Ms. White has also been recognized in *Super Lawyers* for her work in entertainment law. A copy of Ms. White's bio is attached hereto as Exhibit 12.

16. Ms. White's time on this matter was primarily spent formulating case strategy and communicating with the client.

17. From April 13, 2017, to March 26, 2019, Ms. White billed 3.9 hours on this matter, for total fees of \$2,886.00. Ms. White's average effective hourly rate during the relevant period was \$740.00.

18. The NLJ Survey indicates that the hourly rates for highly experienced partners at law firms of comparable size in New York City range from \$860.00 to \$1,250.00, which the average hourly rate of \$740 is well below, and also does not account for rate increases that have occurred since 2014. (Ex. 6)

C. C. Linna Chen

19. Ms. Chen is a senior litigation associate with experience litigating copyright infringement in this and other districts. She is a 2010 graduate of Columbia Law School, where she was a Harlan Fiske Stone scholar and an editor of the *Columbia Journal of Law and the Arts*. She has been licensed to practice law in the State of New York since 2011. Ms. Chen has experience handling a broad array of complex litigation matters, specifically concentrating on copyright and other intellectual property matters, and media and entertainment. Ms. Chen was named a New York Metro Rising Star in Intellectual Property Litigation by *SuperLawyers* from 2014 through 2018. A copy of Ms. Chen's bio is attached as Exhibit 13.

20. Ms. Chen's time on this matter was primarily spent researching and preparing motion papers and other written submissions; assisting in the formulation of case strategy; interfacing directly with client representatives; undertaking all aspects of the discovery process, including conducting meet and confers and drafting letter correspondence with opposing counsel, drafting requests for production and interrogatories, and collecting, reviewing, and producing discovery documents.

21. From April 18, 2017 to March 26, 2019, Ms. Chen billed 104.2 hours on this matter, for total fees of \$78,214.90. Ms. Chen's average effective hourly rate during the relevant period was \$750.62.

22. The NLJ Survey indicates that the average hourly rates for senior associates at law firms of comparable size in New York City range from \$620 to \$815, which is in line with Ms. Chen's average effective hourly rate of \$750.62. (Ex. 6)

D. Sarah Levitan Perry

23. Sarah Levitan Perry is a litigation associate in Loeb's New York City office. She is a 2013 graduate of Boston College Law School, where she was the Note Editor of the *Boston College International and Comparative Law Review*. She has been licensed to practice law in the State of New York since 2014. Ms. Perry has experience handling a range of complex litigation matters, including claims related copyright and trademark infringement, false advertising, and unfair competition. A copy of Ms. Perry's bio is attached as Exhibit 14.

24. Ms. Perry's time on this matter was primarily spent researching and preparing drafts of the reply brief for the motion for summary judgment.

25. From April 13, 2017 to March 26, 2019, Ms. Perry billed 24.1 hours on this case, for total fees of \$14,783.96. Her average effective hourly rate during the relevant period was \$613.44.

26. The NLJ Survey indicates that the average hourly rates for mid-level associates at law firms of comparable size in New York City range from \$340 to \$675, which is in line with Ms. Perry's average hourly rate of \$613.44. (Ex. 6)

E. Other Loeb Professionals

27. **Antoinette Pepper**, who served as the day-to-day paralegal assigned to this matter, has over 30 years of experience as a litigation paralegal. Ms. Pepper's time on this matter was primarily spent cite-checking and Shephardizing various written submissions by Defendants and assembling, organizing, and maintaining case files and discovery materials.

Ms. Pepper's average effective hourly rate during the relevant period was \$419.79. From April 13, 2017 to March 26, 2019, Ms. Pepper billed 24 hours on this case, for total fees of \$10,075.00.

28. **Geri Papa** has over 25 years of experience as a litigation paralegal. Ms. Papa's time on this matter was primarily spent attending to filing letter motions to Magistrate Judge Freeman. Ms. Papa's average effective hourly rate during the relevant period was \$425.00. From April 13, 2017 to March 26, 2019, Ms. Papa billed 0.4 hours on this case, for total fees of \$213.74.

29. **Roxanne McRae** has over 7 years of experience as a litigation paralegal. Ms. McRae's time on this matter was primarily spent preparing maintaining the case file. Ms. McRae's average effective hourly rate during the relevant period was \$235. From April 13, 2017 to March 26, 2019, Ms. McRae billed 0.3 hours on this case, for total fees of \$70.50.

30. **Timothy Cummins** has over 25 years of experience as a litigation paralegal and served as Managing Clerk of Loeb's New York City office. Mr. Cummins' time on this matter was primarily spent managing and updating Loeb's internal case calendar for this action and ECF-filing various motion papers and other submissions. Mr. Cummins' average effective hourly rate was \$380.00. From April 13, 2017 to March 26, 2019, Mr. Cummins billed 3.2 hours on this case, for total fees of \$1,216.

31. **Lawrence Mehringer** has over 30 years of experience as a law clerk and served as Managing Clerk of Loeb's New York City office. Mr. Mehringer's time on this matter was primarily spent ECF-filing various motion papers and other submissions. Mr. Mehringer's average effective hourly rate was \$390.00. From April 13, 2017 to March 26, 2019, Mr. Mehringer billed 7.6 hours on this case, for total fees of \$2,991.39.

32. **Christian Perez** has over 3 years of experience as a litigation paralegal and served as Docketing Clerk of Loeb's New York City office. Mr. Perez's time on this matter was primarily spent managing and updating Loeb's internal case calendar for this action. Mr. Perez's average effective hourly rate was \$275. From April 13, 2017 to March 26, 2019, Mr. Perez billed 2.7 hours on this case, for total fees of \$818.22.

33. **Shireen Kumar** has several decades of experience as a research librarian. Ms. Kumar's time on this matter was primarily spent locating research documents in connection with Plaintiff's deposition. Ms. Kumar's average effective hourly rate during the relevant period was \$325. From April 13, 2017 to March 26, 2019, Ms. Kumar billed 0.4 hours on this case, for total fees of \$130.

34. **Josh Gorruso** is Loeb's Director of Litigation Support. Mr. Gorruso has over 18 years of experience in law firm technology. Mr. Gorruso's average effective hourly rate during the relevant period was \$391.56. From April 13, 2017 to March 26, 2019, Mr. Gorruso billed 4.6 hours on this case, for total fees of \$1,801.18.

35. Based on my forty-five years of experience as a litigator and as a partner and practice chair in Loeb's New York City offices, it is my belief that the average effective hourly rates for these Loeb professionals are commensurate with the hourly paralegal rates charged by other New York City law firms of similar size, and are reasonable given their years of experience.

II. The Number of Hours Worked by Loeb Professionals Was Reasonable Given the Length and Complexity of the Case

36. As part of Loeb's regular billing practices, each Loeb professional who performed services for Defendants in connection with this matter prepared a detailed time record of the time expended and services rendered on a daily basis. These records were then entered into a

computer database maintained and supported by Loeb's client accounting and billing department in the regular and ordinary course of business.

37. Each month, a preliminary billing report was generated and reviewed by me as the partner responsible for overseeing Loeb's engagement by Defendants, to ensure that only reasonable and necessary time entries were included in the monthly invoices. Discounts were applied as appropriate.

38. The following chart accurately summarizes all time billed by Loeb professionals and charged to Defendants in connection with this action from April 13, 2017 to March 26, 2019.

Timekeeper	Position	Total Hours	Average Effective Hourly Rate	Total Fees from April 13, 2017 – March 26, 2019²
Barry I. Slotnick	Partner	51.3	\$913.01	\$46,837.61
Debbie White	Partner	3.9	\$740.00	\$2,886.00
C. Linna Chen	Senior Associate	104.2	\$750.62	\$78,214.90
Sarah Levitan Perry	Associate	24.1	\$613.44	\$14,783.96
Antoinette Pepper	Paralegal	24	\$419.79	\$10,075.00
Geri Papa	Paralegal	.4	\$425.00	\$213.74
Roxanne McRae	Paralegal	.3	\$235.00	\$70.50
Timothy Cummins	Paralegal/Managing Clerk	3.2	\$380.00	\$1,216.00
Lawrence Mehringer	Managing Clerk	7.6	\$390.00	\$2,991.39
Christian Perez	Paralegal/ Docketing Clerk	2.7	\$275.00	\$818.22

² The total fees listed account for discounts and adjustments applied to Defendants' invoices.

Timekeeper	Position	Total Hours	Average Effective Hourly Rate	Total Fees from April 13, 2017 – March 26, 2019²
Josh Gorruso	Director of Litigation Support	4.6	\$391.56	\$1,801.18
Shireen Kumar	Librarian	.4	\$325.00	\$130.00
Total Fees				\$160,038.50

39. Attached as Exhibit 15 (“Time Detail”) hereto is a report containing billing entries made by the Loeb attorneys and paralegals identified above. Certain time entries on this billing report have been redacted to preserve attorney-client privilege or attorney work-product confidentiality. If necessary, Defendants will produce an unredacted copy of the Time Detail for the Court’s *in camera* review.

40. I have reviewed the attached Time Detail, and based on my forty-five years of experience as a litigator and my knowledge of the facts of this case, the entries reflect time reasonably and necessarily expended in the defense of this action.

III. Defendants’ Non-Taxable Costs Are Reasonable And Were Necessary To Its Defense of the Action

41. As part of their defense to this action, Defendants incurred certain non-taxable costs, which are summarized in the following chart:

Non-Taxable Costs	Total Non-Taxable Costs from April 13, 2017 to March 26, 2019
Deposition Fee	\$2,710.00
Postage	\$38.40
LEXIS	\$289.10

Non-Taxable Costs	Total Non-Taxable Costs from April 13, 2017 to March 26, 2019
Document Retrieval Charges	\$15.82
Online Research Charges	\$103.58
Express Mail Charges	208.50
Copy Charges	\$78.30
US Copyright Office document retrieval	\$360.00
Litigation Support Vendors	\$362.00
Courier Services	\$13.80
Telephone Charges	\$2.32
Total	\$4,181.82

42. The invoices and other supporting documentation for these costs are attached hereto as Exhibit 16. (Material subject to attorney work product and relating to other cases has been redacted from this documentation.) I have reviewed all of these invoices and documentation and, based on my forty-five years of experience as a litigator and my knowledge of the facts of this case, all of these costs were reasonably necessary to Defendants' defense of this action.

IV. The Total Amount of Fees and Costs Is Reasonable

43. As detailed above, Defendants seeks to recover approximately **\$160,038.50** in attorneys' fees and **\$4,181.82** in non-taxable costs incurred from April 13, 2017 to March 26, 2019, for a total of **\$164,220.32**, and an estimated \$20,000 to \$30,000 for additional costs associated with this motion and reply. This total cost of defense is more than reasonable given the nature of the litigation and Plaintiff's and his counsel's conduct during it.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 4th day of April, 2019.

/s/ Barry I. Slotnick

BARRY I. SLOTNICK

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